



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 17, 1993

Mr. Jeff Hankins
Legal Assistant, Program Division
Legal Services 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR93-068

Dear Mr. Hankins:

This office recently issued OR93-037 in response to a request for an open records decision from the Texas Department of Insurance (the department). In that decision, this office concluded that the department must withhold federal tax identification numbers which appear on two department forms under section 3(a)(1) of the Open Records Act in conjunction with section 6103(a) of title 26 of the United States Code. Subsequent to the issuance of OR93-037, this office has learned that the department did not obtain the federal tax identification numbers the requestor seeks from the Internal Revenue Service or from any Internal Revenue Service forms. We have reconsidered our previous decision based on this new information, and we now conclude, as we explain below, that the department must release the requested information.

Section 6103(a) of title 26 of the United States Code states in pertinent part:

Returns and return information shall be confidential except as authorized by this title--

....

(2) no officer or employee of any [s]tate, any local child support enforcement agency, or any local agency administering a program listed in subsection (1)(7)(D) *who has or had access to returns or return information under this section, . . .*

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or *under the provisions of this section.*
(Emphasis added.)

The emphasized portions of section 6103(a)(2) mean that the provision applies to the release of return information by a state officer or employee only when an officer or employee has obtained such information from the Internal Revenue Service under the

authority of section 6103. *See also* 26 U.S.C. § 7213(a)(2) (providing a penalty for the unauthorized disclosure of return information only when it is obtained from the Internal Revenue Service under a subsection of section 6103). The department did not obtain the identification numbers at issue from the Internal Revenue Service under the authority of section 6103; rather, we understand that insurance company representatives wrote the numbers on forms the companies filed with the department pursuant to V.T.C.S. article 8308, section 18a. We therefore conclude that section 6103 of title 26 of the United States Code does not deem the federal tax identification numbers on the department forms confidential. Thus, under the Open Records Act, you must release the numbers.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-068.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

KKO/KHG/lmm

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OR93-037

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